

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 812 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and Sd/-

MR.JUSTICE R.P.DHOLAKIA Sd/-

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?
1 to 5 -No

STATE OF GUJARAT

Versus

THAKOR GANDAJI CHEHRAJI

Appearance:

PUBLIC PROSECUTOR for Petitioner

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 16/03/98

ORAL JUDGEMENT (Per: B.C.Patel,J.)

The State has preferred this appeal against the order of acquittal recorded by the learned Special Judge in Special (Atrocity) Case No.181 of 1996 on 19-7-1997.

#. The prosecution has come out with the version that on 27-7-1996 at about 4.20 p.m., accused voluntarily caused injury on the person of the complainant by means of muddamal hook, i.e. large hook made from iron for lifting jute bags and committed the offences punishable under Secs.323 and 504 of Indian Penal Code. It is also alleged by the prosecution that for the complainant, who is a member of Scheduled Caste, by using the words which are punishable under Sec.3(1)(10) of the Atrocities Act, offence has been committed by the accused.

#. On the date of incident, the complainant was on his bicycle on the way towards his house. The accused and his wife were sitting in a cot. While seeing the complainant, she enquired from him as to where he had been yesterday. The complainant replied that he had been on his work. It appears that, thereafter when after supper, the complainant was going, he was called by the accused by shouting and was beaten with muddamal hook. Shouts were raised as a result of which, wife of the complainant and his brother came to the spot and rescued the complainant. On these facts, the complaint was filed being C.R. No.158 of 1996. The trial court framed charge on the basis of charge-sheet submitted by the Police after investigation. The accused pleaded not guilty to the charge and stated that he is entirely innocent. The trial court has appreciated the evidence in detail and has come to the conclusion that the prosecution has failed to prove the case beyond reasonable doubt.

#. The witness Amrutbhai reached the spot after hearing the shouts and he has seen his brother on the spot. Blood was oozing out from the person of the complainant. The learned Judge has observed that whatever the witness stated before the Police is not stated before the Court. He has not referred the presence of Kamuben. In para 10 of the judgment, learned Judge has observed that wife of the complainant came to the spot in the company of Amrutbhai. Amrutbhai does not refer the person of Kamuben. Medical evidence reveals that there were injuries on the person of the complainant. But according to the medical evidence, the injury could not have been caused by the muddamal hook. The Medical Officer has admitted in his cross-examination that injuries were possible on account of fall. The witnesses are from the same family. No independent witness is examined. As the medical evidence is not supporting the complainant's evidence, learned Judge has thought it proper not to rely on the evidence of interested witnesses, more particularly when the incident

took place in Takor Vas while the witnesses are from other area and not from Takor Vas.

#. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

".... This court has observed in *Girija Nandini Devi V. Bigendra Nandini Chaudry* (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

#. In view of this, we would not like to entertain this appeal. Hence, dismissed.

radhan/